



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPP

MARY F. MCTIGUE
DIRECTOR

November 25, 1991
AO-91-25

Robert J. Cordy, Esq.
Governor's Chief Legal Counsel
Executive Department
Commonwealth of Massachusetts
State House
Boston, MA 02133

Re: Public Employees and Political Solicitation

Dear Mr. Cordy:

This letter is in response to your October 11, 1991, letter requesting an advisory opinion regarding the legality of public employee participation at certain types of events.

You have stated that in January of 1991 the new Administration was deluged with requests from business, civic, political and advocacy groups for the new cabinet secretaries, commissioners and senior staff members to attend and speak at functions, forums and panels. In response, the Governor promulgated, through your office, a "bright line" policy on the subject of when a non-elected member of the Administration could agree to speak at or participate in such events. Simply put, that policy was that such officials could not speak at or participate as a panelist or otherwise at any event at which there would be political fundraising.

It was your hope that this policy would comply with both the spirit and letter of section 13 of M.G.L. c.55, the campaign finance laws, while fulfilling the Governor's commitment to get Administration officials out into the public to the greatest extent possible. Recently, you stated that questions have been publicly raised concerning the attendance by non-elected Administration officials at luncheons, panels and forums (hereinafter collectively referred to as "forums") which, while not fundraising events, are hosted and attended by individuals belonging to a council, club, advocacy group or association (hereinafter collectively referred to as "organizations") whose annual membership dues (previously paid) have in part gone to a political party or candidate, or have

been used for political purposes.¹ Such organizations often hold monthly or quarterly forums on issues of importance to their membership to which their members are routinely invited at a cost approximating the cost of organizing the event.² Federal and state business and civic leaders are most often the guest speakers or panelists.

You are continuing the "bright line" policy articulated above but have asked specifically for this Office's guidance on the question when and under what conditions a non-elected public employee is permitted to speak at a forum whose attendees have been invited by reason of their membership in an organization whose membership dues have, in whole or in part, been used for political purposes.

M.G.L. c.55, s.13 establishes a very broad prohibition against political fundraising by public employees. In pertinent part, section 13 provides that:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . .

The prohibition includes not only solicitation and receipt of a "contribution," a term which itself is broadly defined by the campaign finance laws, but also solicitation and receipt of

1. The description in your letter appears to imply that these "events" are not political fundraising events simply because no political fundraising occurs at the event. However, the fact that political fundraising occurs prior to the event through payment of membership dues does not make the dues paid any less of a "contribution" or the event or overall effort any less of a political fundraiser if part or all of the dues have been paid to a candidate or party's political committee. For campaign finance purposes such a distinction is irrelevant. See M.G.L. c.55, s.1.

2. The definition of "contribution" in M.G.L. c.55, s.1 suggests that, under certain circumstances, the actual cost of goods sold or services rendered may be relevant to determine whether a contribution has occurred. However, this consideration is inapplicable here for two reasons. First, the payment of membership dues is not the purchase of a particular good or service. Rather, it provides a member with certain rights or privileges. Secondly, as noted below, section 13 reaches a broader range of political fund-raising activities than does section 1.

things of value not expressly included in the definition of contribution such as a "promise of money" and "assessments." In addition, the prohibition expressly includes both direct and indirect fundraising activities for "any political purpose whatever." Finally, I note that the statute provides serious penalties for its violation including removal from office for conviction as well as imprisonment and fines.

As a general rule, criminal statutes and statutes which implicate First Amendments freedoms should be narrowly construed. However, while an overly broad construction may lead to constitutional problems of vagueness, an overly narrow construction would substantially undercut section 13's fundamental purpose and is unwarranted in this case.

First, while the sweep of section 13's prohibition is broad, I note that even broader prohibitions on public employee political activities which have involved criminal sanctions have been upheld by the U.S. Supreme Court. See Civil Service Commission v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed. 796 (1973) and Broderick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed. 830 (1973). Therefore, First Amendment concerns are not at issue.

In addition, as noted above, an overly narrow construction would clearly defeat the statute's purposes. In the words of the Broderick Court, restrictions on public employee political activities such as those set forth in section 13 "serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion'." Broderick, 413 U.S. 601, 606.

Also, as the Supreme Judicial Court has noted, section 13 (as well as other provisions of the campaign finance laws) demonstrate a "general legislative intent to keep political fund raising and disbursing out of the hands [literally and figuratively] of nonelective public employees" See Anderson v. City of Boston, 376 Mass. 178, 186-187, 380 N.E. 2nd 628 (1978), appeal dismissed, 439 U.S. 1060 (1979). Simply put, access to high level (or indeed any level) non-elected public employees should not be dependent upon the making of political contributions.

Consistent with a balanced interpretation of section 13's language as well as the judicially recognized purposes of section 13, this Office has advised that public employees may not permit their names to be listed on political committee stationery as an officer or member if such stationery is to be used to solicit funds for the political committee (AO-84-02). In addition, the Office has advised that public employees are prohibited from hosting or permitting a fund-raising party at their homes (AO-84-06). More specifically relevant to your question, the Office recently advised that a public employee

may not be the featured speaker at a fund-raising event (AO-90-04). In general, these opinions reflect this Office's understanding of the restrictions imposed by section 13 as well as the judicially recognized policy considerations which underlie the statute.

For the above reasons, it is this Office's opinion that a public employee may not participate as a featured speaker or member of a panel in any type of forum sponsored by an organization if he or she knows or has reason to know that the fact of his or her participation as a speaker or panelist has or will be used by such an organization for political fundraising purposes. From the sponsoring organization's perspective, this means that the organization may not use the public employee's participation as a speaker or panelist to promote, directly or indirectly, or otherwise encourage persons to join the organization if payment of membership dues is a requirement of membership.³

I wish to be very clear that nothing in this opinion should be construed to prohibit political parties and committees from establishing membership organizations which have dues and benefits associated with the organization. However, as a practical matter, the above conclusion has a number of implications for the participation of public employees with such membership organizations.

First, public employees may not participate at a forum as a speaker or panelist (and an organization may not use the fact of such participation) if such participation will be used as a "draw" to increase dues-paying membership or otherwise enhance political fund-raising efforts.

Examples of prohibited activity would include the following:

- * A solicitation to prospective members specifically naming a public employee who will be a featured speaker or panelist in an upcoming forum or who has been a featured speaker or panelist in a past forum.

- * A notice to members specifically naming a public employee who will be a featured speaker or panelist at the next forum if such notice permits a member to bring a "guest" who

3. Your letter did not specifically ask this Office to address an arrangement where membership in a politically-connected organization was promoted by providing access to Administration officials through various forums without specifically identifying which officials would attend any particular forum. Therefore, we do not reach this issue. However, we would caution you that such arrangements may well violate section 13 and we recommend further consultation with this Office by any politically-connected organization considering an arrangement involving such fundraising activities.

would be billed, required or otherwise expected to make a contribution. Even if the "guest" could attend the forum at no charge, such a notice would be improper if the organization planned in any way to subsequently target such a guest for membership in the organization or otherwise.

* A notice to members specifically naming a public employee if an attending member would be billed, required or otherwise expected to make a contribution.

In each of the above examples the specifically named public employee would have indirectly, if not directly, given the organization's membership drive (i.e., political fundraising efforts) assistance by permitting his or her participation at the forum to be so used. In this Office's opinion such activity would be considered an indirect solicitation in violation of M.G.L. c.55, s.13.

Next, public employees have a responsibility to use reasonable care regarding speaking engagements to insure that their participation is not used for political fundraising purposes. While it is the public employee who runs the risk of violating section 13 for permitting the improper use of his or her name, individuals, political parties and political committees who use a public employee's name to solicit contributions with or without that public employee's consent would potentially be in violation of the campaign finance laws as well. See M.G.L. c.55, s.7 which provides, in pertinent part, that "No person or combination of persons . . . shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter." Receiving money raised in violation of section 13 would, in this Office's opinion, violate the prohibition of section 7. See also M.G.L. c.56, 41A.

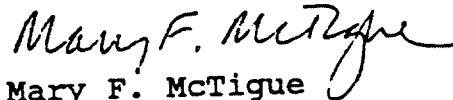
In conclusion, it is the opinion of this Office that public employees may not participate as a featured speaker or panelist at any forum if the fact of their participation has been or will be used, before or after, the forum as a "draw" to future or continued membership in a council, club, advocacy group or other association or organization whose membership dues, regardless of when paid, have gone, in part or in full, to a political party or candidate or have otherwise been used for political purposes.

This opinion has been rendered solely on the basis of the representations in your letter and solely on the basis of M.G.L. c.55. Pursuant to M.G.L. c.55, s.3 this Office has authority to issue opinions regarding all aspects of c.55 including section 13. Please note that responsibility for enforcement of section 13 rests with the attorney general. Therefore, you may also wish to consult with his office.

Robert J. Cordy, Esq.
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Should you or any other member of the Administration have any further questions regarding the issues addressed by this opinion or any other campaign finance matters, please do not hesitate to contact this Office.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue".

Mary F. McTigue
Director